

98TH CONGRESS } HOUSE OF REPRESENTATIVES } REPORT
 2d Session } 98-707

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
ACT OF 1984

APRIL 25, 1984.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. BROOKS, from the Committee on Government Operations,
submitted the following

R E P O R T

[To accompany H.R. 3987]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Operations, to whom was referred the bill (H.R. 3987) to improve the preservation and management of Federal records, and for other purposes, having considered the same, report favorably thereon with an amendment in the nature of a substitute and recommend that the bill as amended do pass.

The amendment strikes out all after the enacting clause of the bill and inserts a new text which appears in italic type in the reported bill.

EXPLANATION OF AMENDMENT

Inasmuch as all after the enacting clause of H.R. 3987 was stricken and all language incorporated into the amendment, this report constitutes an explanation of the amendment.

SUMMARY AND PURPOSE

The National Archives and Records Administration Act of 1984 (H.R. 3987) would create a new National Archives and Records Administration as an independent agency. The bill would restore the Archives to the status it held from its founding in 1934 until it was incorporated into the General Services Administration in 1949.

Title I of the bill amends Title 44 of the United States Code to establish the independent National Archives and Records Administration and transfer the authorities exercised by the current Na-

tional Archives, along with its personnel and assets, to the new Administration. Title I also makes conforming amendments to reflect the establishment of the new agency.

Title II of the bill makes amendments to those sections of Title 44 dealing with operations of the National Archives Trust Fund and National Archives Trust Fund Board. Title II also amends those sections of Title 44 dealing with those procedures to be followed to prevent the unlawful removal or destruction of government records and clarifies the authority of the Archivist to determine what is a Federal "record" and make inspections in furtherance of such determinations. Title II also requires public notice before disposal of public records.

COMMITTEE ACTION AND VOTE

H.R. 3987 was reported by the full Committee on Government Operations by voice vote at a duly called meeting of the Committee on April 10, 1984, with a quorum present.

HEARINGS

A hearing on H.R. 3987 was held by the Subcommittee on Legislation and National Security on March 7, 1984. Testimony was received from the following witnesses: Honorable Glenn English, Chairman, Subcommittee on Government Information, Justice, and Agriculture; Honorable Ray Kline, Acting Administrator, General Services Administration; Dr. Robert Warner, Archivist of the United States; Honorable Frank Carr, Assistant Administrator for Information Resources Management, General Services Administration; Dr. James B. Rhoads, former Archivist of the United States; Dr. Samuel R. Gammon, Executive Director, American Historical Association; Dr. David B. Gracy, Director, Texas State Archives, and President of the Society of American Archivists; Mr. Charles E. Lee, Director, Department of Archives and History, State of South Carolina; Lt. Colonel Varney R. Nell (USAF Ret.), President, National Genealogical Society; and Dr. Wayne D. Rusmussen, President, Society for History in the Federal Government.

DISCUSSION

I. BACKGROUND

The National Archives of the United States was established by an Act of Congress on June 19, 1934, to be responsible for "[a]ll archives or records belonging to the Government of the United States (legislative, executive, judicial, and other) * * *" Under the 1934 Act, the independent agency was headed by an Archivist appointed by the President and confirmed by the Senate. In addition, a National Archives Council, composed of specified executive and legislative branch officials and independent agency heads, was established to define the classes of materials to be transferred to the Archives and to advise the Archivist on the disposition and use of documents transferred to his custody. Also created was the National Historical Publications Commission (now the National Historical Publications and Records Commission).

Under subsequent statutes, operation of the Federal Register and the National Archives Trust Fund Board were placed within the National Archives.

Fifteen years later, pursuant to a recommendation of the Hoover Commission, the Federal Property and Administrative Services Act of 1949 transferred the National Archives to the newly created General Services Administration. The principal archival functions previously exercised by the Archivist were vested in the Administrator of General Services, and the Archivist became an appointee of the Administrator.

II. OPERATION OF THE ARCHIVES WITHIN GSA

As a component of the General Services Administration, the National Archives and Records Service (NARS) performs a variety of functions related to the use and disposition of the records of Federal agencies. These include:

Archival activities.—Appraisal of agency records, acquisition and cataloging of records with historical value, dissemination of reference aids on records, provision of copies of documents to the public, and operation of public programs including the National Archives Building.

Records Centers.—Storage and servicing of non-current agency records and historically valuable records of the National Archives; review and approval of agency record schedules; appraisal of agency offers of records and private gift offers; microfilming of agency records on a reimbursable basis.

Presidential libraries.—Operation of the Herbert Hoover, Franklin D. Roosevelt, Harry S Truman, Dwight D. Eisenhower, John F. Kennedy, Lyndon B. Johnson, and Gerald R. Ford libraries; custody and control of the Presidential papers of Richard M. Nixon and Jimmy Carter.

Publication of official documents.—Publication of the Federal Register and Code of Federal Regulations; United States Statutes at Large; Weekly compilation of Presidential Documents and the annual Public Papers of the President; and the United States Government Manual.

National Historical Publications and Records Commission.—Coordinates and provides technical assistance to archival planning and assessment projects; supports historical document publication projects through a grant program.

Information Security Oversight Office.—Oversees the information security (classification) programs of approximately 65 executive branch entities that create or handle national security information.

Total budget authority for the National Archives and Records Service for FY 1984 is allocated to NARS programs as follows: Records Centers, \$37.2 million; Archival and related services, \$51.8 million; National Historical Publications and Records Commission, \$6.5 million; Information Security Oversight Office, \$650,000.

However, only two-thirds of the total budgeted amount is to be obligated directly to archival programs. The remaining one-third, approximately \$32 million, represents the fixed costs of operating and maintaining archival facilities.

III. DIFFICULTIES IN THE GSA/NARS RELATIONSHIP

During the 35 years that the National Archives has been integrated within the structure of the General Services Administration, a number of groups and individuals concerned with the Federal government's archival activities have contended that this placement has impaired the Archives' effectiveness in handling, preserving, and disseminating Federal records. In his testimony before the Subcommittee on Legislation and National Security, Dr. James B. Rhoads, who served as Archivist of the United States from 1968 to 1979, characterized the defect in the structural relationship as "one of simple and stark incompatibility." Dr. Rhoads gave examples of the problems arising from this relationship:

- In preparation and defense of its annual budget request, the Archives lacks direct access to the Office of Management and Budget and the Congress, but rather must operate through GSA as an intermediary. In addition, "because NARS budgets have been evaluated by elements of OMB that are attuned to buildings management, procurement, and other government-wide housekeeping functions rather than cultural programs, NARS has been unable to secure the resources essential to its mission, and has lagged far behind other cultural and heritage agencies."
- Under GSA's structure of centralized support services, such as legal counsel, personnel management, budget, public information, and OMB and Congressional relations, "the quality of these services has often been poor and non-responsive to the specialized needs of NARS."
- Top Archives officials "are required to spend a great deal of time in meetings and on paperwork having little or no relevance to NARS programs and problems", detracting from their ability to manage the Archives effectively.

Another aspect of the difficulties in the GSA/NARS relationship is the lack of understanding of the mission of the Archives. Dr. Samuel Gammon, executive director of the American Historical Association, referred in his testimony to the "simplistic belief that the Archives is merely the government's file clerk * * *". Similarly, Dr. David Gracy, State Archivist of Texas and President of the Society of American Archivists, contended that "Administrators of GSA * * * have lacked the background, inclination, and—with an average tenure of less than two years—the time to make sound archival and records management policy."

This apparent lack of understanding of the archival function has led GSA over the years to make proposals for alterations in the operations of the Archives that would have had damaging or wasteful consequences. For instance, there was a proposal in the late 1970's to decentralize the core holdings of the Archives and redistribute those holdings to regional centers. While decentralization generally might be a useful tool in improving managerial efficiency in GSA's other operations, in the context of Archives operations such a move would have hindered research efforts and run directly counter to the archival goal of maintaining the unity and integrity of records collections. More recently, GSA has imposed a "zero growth" policy on Archives Records Centers. This policy, according to Dr. Rhoads,

has forced the retention of records within the agencies, at a cost of over \$13 per cubic foot of records, compared to storage costs of under \$1.00 per cubic foot in the Records Centers.

Further, the personnel-intensive nature of Archives operations has made it especially vulnerable to budget cutbacks and reductions-in-force imposed agency-wide on GSA. The damage done by curtailed funding not only impairs the Archives' ability to function effectively on a day-to-day basis; it also jeopardizes the Archives' long-term mission of preservation and protection of vital Federal records of historical value. Lt. Col. (Ret.) Varney R. Nell, president of the National Genealogical Society, pointed out some of the future consequences of present curtailed Archives budgets: " * * * it has not been possible to recruit and train a new generation of archivists. The last class of trainees was hired five years ago, and many of them were lost in the 1982 reduction in force. The problems associated with an overcrowded and outdated National Archives building can only increase in the future. Lack of adequate climate control in records storage areas may contribute to the deterioration of those records. A slowdown in the accessioning of records, due to a lack of both staff and space, postpones the time when these records will be available to researchers."

As serious as the above problems are, they can be characterized as merely the unintended results of the bureaucratic relationship between the Archives and GSA. Equally serious is the effect of the intentional vesting of statutory authority for archival functions in the Administrator, with delegation to the Archivist only as the Administrator sees fit. This statutory structure poses the constant threat of manipulation of the Archives' professional processes to achieve political purposes. The most striking instance of this threat becoming reality occurred in 1974, when the Administrator entered into an agreement with former President Richard Nixon which would have given Mr. Nixon substantial continuing control over his presidential records and could have empowered him to order those records destroyed. According to Dr. Rhoads, who was Archivist at the time, "This agreement was negotiated and signed without the participation or knowledge of any official of NARS."

The agreement with former President Nixon was overturned by an Act of Congress (The Presidential Recordings and Materials Preservation Act, P.L. 93-526), and the incident led to passage in 1978 of the Presidential Records Act (P.L. 95-581), which made clear that "The United States shall reserve and retain complete ownership, possession, and control of Presidential records * * *." Undoubtedly, Congress would be prepared to respond in the future to any equally egregious example of attempted manipulation of the Archives for political purposes. Nevertheless, to the extent that the incident was the consequence of statutorily mandated structural relationships, the most effective corrective action is to alter those relationships to prevent a recurrence.

In summary, the placement of the National Archives within the General Services Administration, and the vesting of statutory authority for most archival functions in the Administrator of General Services, has operated as an impediment to the fulfillment of the Archives' mission of managing and preserving the records of the Federal government. The difficulties experienced by the Archives

in its present structure have also had a harmful effect on its professional standing: when Dr. Gracy, the president of the Society of American Archivists, was asked how the National Archives is perceived in the professional archival community, he replied, "As a former leader."

IV. AN INDEPENDENT NATIONAL ARCHIVES

H.R. 3987 corrects the situation described above by establishing a National Archives and Records Administration as an independent agency in the executive branch. Title I of the bill would transfer the archival related functions of Title 44 of the United States Code to the new agency and vest those functions in the Archivist. Archival related entities such as the National Archives Trust Fund and the National Historical Publications and Records Commission likewise would become part of the new Archives, and other statutory duties of an archival nature would become the responsibility of the Archivist.

The Archivist

Under Section 102 of the bill, the Archivist of the United States would once again become a Presidential appointee, to be confirmed by the Senate. H.R. 3987 recognizes the desirability of ensuring that the Archivist, like other presidential appointees in the executive branch, will be responsive to the leadership of the president, while at the same time providing the Archivist with a degree of insulation from improper political pressure in the discharge of his duties. To achieve both these ends, the bill specifies that the Archivist shall be appointed without regard to political affiliations and solely on the basis of his or her professional qualifications. The Committee expects that this will be achieved through consultation with recognized organizations of professional archivists and historians.

The bill provides that the Archivist may be removed by the President; to ensure that the President will be held accountable in the political process for any decision to remove an Archivist, it also requires that the President communicate the reasons for any such action to each House of Congress.

Records Management

Chapters 29 and 31 of Title 44 of the United States Code provide authority for records management activities by GSA and the individual agencies, respectively. Historically, responsibility for these functions was delegated by the Administrator to the Archivist, and H.R. 3987 as introduced transferred all authority under these chapters to the Archivist.

In 1980, however, Congress passed the Paperwork Reduction Act (P.L. 96-511), which had originated in the House in the Committee on Government Operations. Pursuant to the Act's goal of improving the efficiency of Federal information management functions, GSA was assigned a lead role in information resources policy formulation and oversight. Also, in the legislative history of P.L. 96-511, it was suggested that GSA consolidate its activities pertaining

to automatic data processing, telecommunications, and records management.

As a result, the Administrator in 1982 reassigned certain records management functions to the newly created Office of Information Resources Management. These include the records management program elements of correspondence, mail, forms, reports, certain aspects of files, micrographics, copying, and office automation (including word processing).

NARS retained records management functions pertaining to the creation of records with permanent value. These include:

- Appraisal of requests for disposition authority for agency records.
- Appraisal of records offered for accessioning into the National Archives.
- Formulation of recommendations concerning agency disposal, long-term or permanent retention, and interagency transfers.
- Review of Federal record retention requirements.
- Provision of technical guidance and assistance to agencies in development of disposition schedules.
- Inspection and evaluation of agency retention and disposition programs.
- Assistance to agencies in effecting systematic records retirement systems.
- Development of general records schedules governing disposition of common record types.
- Provision of guidance and assistance to agencies in developing and installing filing and classification systems to ensure proper disposition.
- Establishment of standards for protection of vital records (jointly with the Federal Emergency Management Agency).
- Formulation of standards for appropriate and adequate documentation of agency organization, policy, and activities.
- Provision of technical guidance and assistance to Federal agencies in establishing records systems that adequately document agency activities.
- Ensuring that changing technology does not result in loss of adequate documentation.
- Inspection of agency documentation practices to ensure necessary and proper documentation is being preserved in a retrievable manner.
- Operation of Federal Records Centers.
- Provision of centralized microfilming services.
- Disposal of records.
- Reporting to Congress on records disposal activities.

Because of its dual interests in maintaining the integrity of the Archives records management activities and ensuring that GSA's information resources management responsibilities are carried out adequately, the Committee has paid particular attention to the proper assignment of records management responsibilities. A major focus of the Legislation and National Security Subcommittee's March 7 hearings was the issue of records management. The Subcommittee heard at that time from the three cognizant officials in the records management area: the Acting Administrator of GSA, the Archivist, and the Assistant Administrator for Information Re-

sources Management. All three testified that the current division of records management authority works well both from the aspect of archival responsibilities and from the aspect of management of information resources. For that reason, H.R. 3987 was amended to divide records management authority between the Archivist and the Administrator along the lines that this authority is currently exercised.

The bill as ordered reported revises Section 2904 of Title 44 to authorize the Archivist to provide guidance and assistance to Federal agencies with respect to ensuring adequate and proper documentation of the policies and transactions of the Federal Government and ensuring proper records disposition. The Administrator is authorized to provide guidance and assistance to ensure economical and effective records management by such agencies. It is the Committee's intent that the authority granted to the Archivist and the Administrator in the revised Section 2904 shall encompass the authority exercised respectively by the Archivist and OIRM under the division of records management responsibility in effect at this time. The bill similarly revises sections 2906 and 2115 (as renumbered) of Title 44 to reflect the current division of records management responsibility.

Recognizing the interrelationships between GSA activities and those of the National Archives and Records Administration as created in H.R. 3987, especially in the field of records management, the Committee directs the Administrator and the Archivist to establish coordinating mechanisms to ensure that each agency is informed of the activities of the other and that both exercise their authorities with respect to other Federal agencies in a coordinated manner.

V. OTHER PROVISIONS OF H.R. 3987

In the course of discharging its oversight responsibilities dealing with the National Archives over the past several years, the Committee has become aware of a number of problems associated with Archives operations. To ensure that the independent National Archives and Records Administration established under Title I of H.R. 3987 functions as efficiently and effectively as possible, Title II of the bill makes several procedural changes to Title 44 of the United States Code.

The National Archives Trust Fund

A 1979 General Accounting Office report prepared at the request of the Chairman of the Subcommittee on Government Information and Individual Rights ("Improvements are Needed in the Management of the National Archives Preservation and Trust Fund Activities"—LCD 80-13) pointed out a number of shortcomings in the Trust Fund's operations. The report found that the statutes governing Trust Fund operations were broadly written and that the Congress was inadequately informed about the range of Trust Fund activities. The report also concluded that the Trust Fund had misused its direct-line (non-civil service) authority, and it called into question some of the fiscal and accounting practices of the Trust Fund.

The Committee understands that many of the problems identified in the GAO report have been dealt with internally through administrative action. These include a major reduction in the number of personnel on a direct-hire basis and adoption of improved accounting practices. Several sections of Title II of H.R. 3987 make additional changes to Trust Fund operations to meet the points raised by the report.

Under current law, the Administrator is allowed to charge 10 percent above costs to make reproductions of material in his custody. While the Committee understands that this surcharge affords the Trust Fund a comfortable margin of flexibility in its operations, it questions whether a margin of this degree is either required or prudent. For that reason, Section 201 of H.R. 3987 amends Section 2116(c) of title 44 (as redesignated by the bill) to allow the Archivist to recover a fee set to recover reproduction costs, plus increments to account for estimated replacement costs of equipment.

Under current law, the Trust Fund Board is allowed to hire necessary employees without regard to the civil service laws. H.R. 3987 removes this direct hire authority, requiring instead that personnel be hired "subject to the laws and regulations governing appointments in the competitive service." The Committee has not been made aware of any compelling personnel needs of the Trust Fund that cannot be filled through the civil service process, through contracting, or through other arrangements.

To facilitate more comprehensive oversight of Trust Fund activities, Section 202 of H.R. 3987 amends Section 2302 of Title 44 to require the Archivist to submit to the Congress an annual report, by account, detailing both receipts and operations of the Trust Fund.

Section 202 of the bill makes other incidental revisions to the Trust Fund's authority.

Authority to Litigate and Inspection of Records

To carry out the Archives' mission of preserving the historically valuable records of the Federal government, the Archivist must have the authority to make the determination of what constitutes a Federal record. Further, there must exist a statutory procedure to ensure that Federal agency records are not unlawfully removed or destroyed. Incidents over the past several years, however, have shown that there is inadequate authority in current law to provide the requisite safeguards in these areas.

According to the Archivist, "From the time the National Archives was established, we had interpreted the law as giving the Archivist the authority to inspect agency records and determine which were Federal records." However, the Supreme Court's 1980 decision in *Kissinger v. Reporters' Committee for Freedom of the Press* (445 U.S. 136), which denied an attempt under the Freedom of Information Act to retrieve material produced by the former Secretary of State while he held that office, suggests that this authority lies instead with the agency head. The laborious four-year chronology of the Archivist's attempts to examine the material and make a determination of its record status, printed below, along with reported denial of access to the Archivist by other agencies,

makes it clear that the Archivist's authority in this area must be reinforced.

NARS AND THE KISSINGER TAPE TRANSCRIPTS

CHRONOLOGY

November 12, 1976.—Deed of gift and agreement, executed by Henry Kissinger and Daniel J. Boorstin, covering a collection of personal papers and copies of Government papers.

November 15, 1976.—Bulletin B-65, issued by NARS, containing a discussion of the nature of Federal records and distinguishing them from personal papers.

December 24, 1976.—Second deed of gift and agreement, executed by Henry Kissinger and accepted by Daniel Boorstin on December 25, covering transcribed secretarial notes of his telephone conversations. Attached to this deed of gift is a memorandum of the legal advisor, Department of State, dated November 11, 1976.

January 4, 1977.—Letter from Archivist James B. Rhoads to Henry Kissinger requesting Kissinger's cooperation in permitting archivists to examine the telephonic transcripts and related documents.

January —, 1977.—Law suit brought by Reporters Committee for Freedom of the Press, seeking access to the Kissinger transcripts and a declaration that they are public property.

January 18, 1977.—Letters from Henry Kissinger to Archivist Rhoads enclosing a copy of a memorandum by legal counsel, Department of State, and in effect declining to permit examination. The memorandum of counsel is dated January 14, 1977. Also enclosed is a copy of Kissinger's letter to the Honorable Jack Brooks, undated.

January 19, 1977.—Letter from Archivist Rhoads to Records Officer John Pruden at Department of State requesting that all materials that are the subject of the controversy remain in Department of State custody.

February 3, 1977.—Memorandum of counsel signed by Don Young, addressed to Archivist Rhoads, analyzing the case and attacking the State Department's memorandum of law dated January 14.

February 11, 1977.—Letter of Archivist Rhoads to Henry Kissinger again requesting his cooperation in making possible an examination of the materials.

March 1977.—Application of Standards for the Determination of Records Status, a paper produced by a task force of archivists, describing the steps necessary in determining the records status of a document or file.

August 9, 1977.—Preliminary inspection agreement, entered into by the Department of Justice and attorneys representing Kissinger, to permit inspection of transcripts by one State Department representative and one NARS archivist.

August-September 1977.—Inspection of transcripts is completed by State Department representative and NARS archivist.

January 25, 1978.—Summary judgment is entered by U.S. District Judge Smith, declaring that the telephone transcripts are Federal records.

November 1, 1978.—Judgment is upheld by the Court of Appeals.

March 3, 1980.—Decision of the Supreme Court (see 44 US 136 (1980)). The Court decided that the plaintiff in original case had no standing and therefore did not decide the issues of whether the transcripts were agency records and whether they were wrongfully removed by Dr. Kissinger. However, the Court pointed out that a proper procedure existed to resolve the issues; that is, involving the head of the agency and the Administrator of GSA in recovery of records.

March 5, 1980.—A meeting took place at the Department of Justice including lawyers representing Department of State and General Services Administration to discuss the status of the Kissinger transcripts.

June 11, 1980.—Letter of the Administrator of General Services to the Secretary of State seeking his cooperation in resolving the matter of the legal status of the Kissinger transcripts.

September 19, 1980.—Reply of the Secretary of State to the Administrator describing that Department's review procedure of the Kissinger transcripts and declining to allow NARS archivists to engage in the review process.

October 15, 1980.—A meeting of representatives of Department of State, Department of Justice, and General Services Administration including archivists, to discuss the procedures for review of the Kissinger transcripts.

October 27, 1980.—GSA General Counsel requests resolution of dispute by the Department of Justice's Office of Legal Counsel.

November 26, 1980.—GSA General Counsel sends to Department of Justice a Memorandum of Law detailing the GSA position that GSA/NARS should participate in the review process of the Kissinger transcripts.

January 13, 1981.—In a Memorandum of Law from the Department of Justice, the Office of Legal Counsel concludes that the authority to review the Kissinger transcripts for purposes of determining their records status lies entirely with the Department of State, with no authority provided in law for the National Archives and Records Service to participate.

Sections 203 and 204 of H.R. 3987 strengthen the Archivist's role in the processes of records protection and records status determination. Currently, under Section 2905 of Title 44, the Administrator is required to notify the head of an agency of any actual, impending, or threatened unlawful removal, defacing, alteration, or destruction of records. The Administrator also is required to assist the agency head in initiating action through the Attorney General to recover unlawfully removed records and other redress. A similar provision is included in Section 3106 of Title 44.

Section 203 of H.R. 3987 strengthens the Archivist's role in the process by requiring the Archivist, through the Attorney General, to initiate an action if the agency head fails to do so in a reasonable period of time. Further, to ensure that the agency head and the Attorney General are held publicly accountable in upholding their responsibilities under these provisions of law, Section 203 requires

the Archivist to report to the appropriate committees of the Congress the circumstances of an agency head's failure to initiate action or an Attorney General's refusal to do so.

In the matter of records status determination, Section 204 of H.R. 3987 explicitly gives to the Archivist the authority to determine what constitutes a "record". In addition, the section authorizes the Archivist access to any material made or received by a Federal agency to accomplish the records determination process.

In including these provisions in H.R. 3987, the Committee in no way intends this authorization to be dispositive of the issue of a possible private right of action to recover Federal records. Nor does the Committee imply that this statutory scheme constitutes an exclusive remedy for such recovery. Rather it is the purpose of these provisions to clarify the role and authority of the Archivist in the statutory process of records determination and protection.

The Committee also notes that Section 2906 of H.R. 3987 reiterates the requirement of current law that records, the use of which is restricted by law or for reasons of national security or the public interest, shall be inspected under regulations that are subject to the approval of the agency concerned or the President. Section 2906 also requires that in conducting the inspection of agency records, the Archives shall comply with all other Federal laws and are subject to the sanctions provided therein.

Public Notice

Section 205 of H.R. 3987 requires the Archivist to place in the Federal Register a public notice and to provide an opportunity for comment before empowering an agency to dispose of records.

VI. CONCLUSION

The Committee recommends the establishment of an independent National Archives and Records Administration through the passage of H.R. 3987. In making this recommendation, the committee is fully aware that such an organizational change is not a panacea. Removing the Archives from the General Services Administration will not, in itself, ensure that the Archives will be able to fulfill its mission with maximum efficiency and effectiveness. For this goal to be achieved, the Archives must receive adequate funding and, most importantly, must have dedicated and innovative leadership. The Committee will continue to exercise oversight of the Archives' operations to see that the latter requirements are met.

INFLATIONARY IMPACT

In compliance with clause 2(e)(4) of House Rule XI, it is the opinion of this Committee that the provisions of H.R. 3987 will have no inflationary impact on prices and costs in the operations of the national economy.

OVERTSIGHT FINDINGS

The Committee, through its Subcommittee on Government Information, Justice, and Agriculture, has maintained continuous and comprehensive oversight of the operations of the National Archives

and its structural relationship to the General Services Administration since the committee assumed jurisdiction over the Archives at the beginning of the 94th Congress. Some of the Subcommittee's recent investigative and legislative hearings on this subject include:

98TH CONGRESS

Investigative Hearing

July 14, 1983.—The National Archives and Records Service and Its Relationship to General Services Administration.

Legislative Hearings

April 7, 1983.—Reauthorization of the National Historical Publications and Records Commission (H.R. 2196).

February 23, 1984.—Presidential Libraries Funding (H.R. 2446, H.R. 3138, H.R. 4017, H.R. 4786).

97TH CONGRESS

Investigative Hearing

March 2-4, 1982.—Oversight of the National Archives and Records Service.

Legislative Hearing

April 27, 1981.—Reauthorize the National Historical Publications and Records Commission.

96TH CONGRESS

Investigative Hearings

June 19 and 21, 1979.—National Archives and Records Service Film-Vault Fire at Suitland, Md.

June 25; July 30; September 20; November 8, 1979.—National Archives and Records Service Documents Preservation Program and Trust Fund.

September 21, 1979.—Oversight of National Archives and Records Service Concerning the Leasing Arrangements for the Lansburg Building (not printed).

Legislative Hearing

April 30, 1979.—Reauthorization of Appropriation for the National Historical Publications and Records Commission (H.R. 3717, H.R. 3923).

The Subcommittee's oversight activities have provided a basis for the legislative recommendations included in H.R. 3987.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

No new budget authority or tax expenditures are contained in H.R. 3987.

COST ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE

The cost estimate prepared by the Congressional Budget Office under Section 308(a) and 403 of the Congressional Budget Act of 1947 is contained in the following letter from its Director:

**CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., April 19, 1984.**

Hon. JACK BROOKS,
*Chairman, Committee on Government Operations, U.S. House of
Representatives, Rayburn House Office Building, Washington,
D.C.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 3987, the National Archives and Records Administration Act of 1984, as ordered reported by the House Committee on Government Operations, April 10, 1984. We expect that no significant additional costs will be incurred by the federal, state, or local governments if this legislation is enacted.

The bill establishes an independent National Archives and Records Administration. The agency will be administered by an archivist, appointed by the President. Under current law, the National Archives and Records Service (NARS) in the General Services Administration (GSA) performs the functions of this proposed new agency. All personnel and funds associated with NARS will be transferred to the new independent agency. A percentage of funds and positions in the general management appropriation of the GSA proportionate to the percentage of NARS employees in GSA will be transferred to the National Archives and Records Administration. It is possible that some additional costs will be incurred in providing separate administrative support services for the new agency. However, some of these services may be provided under contract by GSA, and the net additional costs are not expected to be substantial.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

RUDOLPH G. PENNER, *Director.*

COMMITTEE ESTIMATE OF COST

The committee agrees with the estimate of the Congressional Budget Office.

SECTION-BY-SECTION ANALYSIS

TITLE I

Section 101—Establishment

Section 101 amends section 2102 of title 44, U.S.C., to create an independent establishment in the executive branch of the government to be known as the National Archives and Records Administration, administered under the supervision and direction of the Archivist of the United States.

Section 102—Organization and General Authority

Section 102(a) amends chapter 21 of title 44, U.S.C. by redesignating sections 2103 through 2114 as sections 2107 through 2118, respectively; and adding the following new sections after section 2102:

Section 2103 provides for the officers of the National Archives and Records Administration. Subsection (a) provides that the Archivist of the United States shall be appointed by the President by and with the advice and consent of the Senate; that such appointment shall be without regard to political affiliations and solely on the basis of the professional qualifications required to perform the duties and responsibilities of the office of Archivist; that the Archivist may be removed from office by the President; and that the President shall communicate the reasons for any such removal to each House of the Congress. Subsection (b) provides that the Archivist shall be compensated at the rate provided for Level III of the Executive Schedule under section 5314 of title 5, U.S.C. Subsection (c) provides that a Deputy Archivist shall be appointed by and serve at the pleasure of Archivist; that the Deputy Archivist shall be established as a career reserved position in the Senior Executive Service within the meaning of section 3132(a)(8) of title 5, U.S.C.; that the Deputy Archivist shall perform such functions as the Archivist shall designate; and that during any absence or disability of, or vacancy in, the office of the Archivist, the Deputy shall act as Archivist.

Section 2104 provides administrative authorities to the Archivist. Subsection (a) provides that the Archivist shall prescribe policies, standards, criteria, procedures, rules, and regulations necessary or appropriate to carry out the functions of the National Archives and Records Administration (hereinafter referred to as the "Administration"); and that the head of each Federal agency shall issue such orders and directives necessary to conform the activities of the agency with the policies, standards, criteria, procedures, rules, and regulations prescribed by the Archivist. Subsection (b) provides that, except as otherwise expressly provided by law, the Archivist may delegate functions to officers and employees of the Administration, and may authorize successive redelegations of such functions deemed necessary or appropriate by the Archivist; but that a delegation of functions by the Archivist shall not relieve the Archivist of responsibility for the administration of such functions. Subsection (c) provides that the Archivist may establish, maintain, alter or discontinue such regional, local, or other field offices as the Archivist finds necessary or appropriate. Subsection (d) provides that the Archivist may establish advisory committees to advise with respect to any function of the Archivist or the Administration; and that the members of any such committee shall serve without compensation but shall be entitled to transportation expenses and per diem in lieu of subsistence in accordance with section 5703 of title 5, U.S.C. Subsection (e) provides that the Archivist shall advise and consult with interested Federal agencies to obtain their advice and assistance in carrying out the purposes of chapter 21, title 44, U.S.C. Subsection (f) provides that each Federal agency must furnish to the Archivist, upon request, any information the

Archivist finds necessary to carry out his duties. Subsection (g) provides that, if authorized by the Archivist, officers and employees of the Administration having investigatory functions are empowered to administer oaths while conducting investigations.

Section 2105 provides for personnel of and services to the Administration. Subsection (a) authorizes the Archivist to select, appoint, employ, and fix the compensation of such officers and employees pursuant to part III of title 5, U.S.C., necessary to perform the functions of the Archivist and the Administration. Subsection (b) authorizes the Archivist to obtain the services of experts and consultants under section 3109 of title 5, U.S.C. Subsection (c) authorizes the Archivist, notwithstanding section 973 of title 10, U.S.C., or any other provision of law, to utilize the services of officials, officers, and other personnel in other Federal agencies, including personnel of the armed services, with the consent of the head of the agency concerned. Subsection (d) authorizes the Archivist to accept and utilize voluntary and uncompensated services.

Section 2106 requires the Archivist to report to Congress in January of each year, and at such other times as the Archivist finds appropriate, on the administration of the functions of the Archivist and the Administration.

Section 102(b) adds several new definitions to section 2101 of title 44, U.S.C., which definitions apply throughout chapter 21 of title 44, U.S.C.:

(1) "Archivist" means the Archivist of the United States appointed under section 2103 as added by section 102(a).

(2) "Administration" means the National Archives and Records Administration established under section 2102 as amended by section 101.

(3) "Federal agency" means any executive or military department, government corporation, Government-controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), any independent regulatory agency, or any establishment in the legislative or judicial branch of the Government (except the Senate and the House of Representatives). This definition applies in chapter 21 notwithstanding the application of a narrower definition of "Federal agency" (from section 3 of the Federal Property and Administrative Services Act of 1949) to chapters 21, 25, 29, 31, and 33 of title 44, U.S.C., pursuant to section 2901(13) of such title.

Section 102(c) provides the new table of contents of chapter 21 of title 44, U.S.C., and the amended item relating to chapter 21 in the table of chapters for such title.

Section 103—Transfers

Section 103(a) transfers the National Archives and Records Service of the General Services Administration to the National Archives and Records Administration, established by section 2102, title 44, as amended by Section 101 of the bill.

Section 103(b) transfers to the Archivist functions assigned to the Administrator of General Services under Executive Orders 10530 (relating to documents and the Administrative Committee of the Federal Register); 11440 (relating to supplemental use of Federal exhibits and displays); and 12356 (relating to national security in-

formation and the Information Security Oversight Office), and Public Laws 89-169 (relating to the Lyndon Baines Johnson Presidential Archival Depository) and 89-547 and 95-34 (relating to the John Fitzgerald Kennedy Library).

Section 103(c) provides that, prior to appointment and confirmation of an Archivist pursuant to section 2103 as amended, the individual holding the office of Archivist of the United States on the day before the effective date of this Act may serve as Archivist and be compensated at the rate provided under section 2103(b) as amended.

Section 104—Transfer of Personnel

Section 104(a) provides that the personnel employed in connection with, and the assets, etc., made available in connection with the functions and agencies transferred by the Act are transferred to the Archivist for appropriate allocation, subject to section 1531 of title 31, U.S.C (relating to transfers of functions and activities generally); that a percentage of the funds and associated positions in the General Management and Administration appropriation for the General Services Administration, proportionate to the percentage of National Archives and Records Service employees in the General Services Administration, is transferred to the Archivist for appropriate allocation; and that unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which they were originally authorized and appropriated.

Section 104(b) requires that the transfer of full-time personnel (except special Government employees) and part-time personnel holding permanent positions not cause any such employees to be separated or reduced in grade or compensation for one year after such transfer or after the effective date of this Act, whichever is later.

Section 105—Savings Provisions

Section 105(a) provides that all actions taken in the performance of any function transferred by this Act shall continue in effect until modified, terminated, superseded, set aside, or revoked in accordance with law by any authorized official, a court of competent jurisdiction, or by operation of law.

Section 105(b) provides that transfers of functions made by this Act shall not affect any proceedings pending on the effective date of this Act before the General Services Administration, but shall be continued; that nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted; and that the Archivist is authorized to promulgate regulations providing for the orderly transfer of proceedings from the General Services Administration to the Administration.

Section 105(c) provides that, except as provided in subsection (e), the provisions of this Act shall not affect actions commenced prior to the effective date of this Act and, in all such actions, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this Act had not been enacted.

Section 105(d) provides that no action or other proceeding lawfully commenced by or against any officer of the United States acting in his or her official capacity shall abate by reason of any transfer of functions by this Act, nor shall any cause of action by or against the General Services Administration or by or against any officer thereof in the official capacity of such officer abate by reason of any such transfer of functions.

Section 105(e) provides that if, before the date on which this Act takes effect, the General Services Administration or any officer thereof in the official capacity of such officer, is a party to an action, and under this Act any function in connection with such action is transferred to the Archivist or any other official of the Administration, then such action shall be continued with the Archivist or other appropriate official of the Administration substituted or added as a party.

Section 105(f) provides that orders and actions of the Archivist exercising functions transferred by this Act shall be subject to judicial review the same as if such orders and actions had been by the individual holding the office of Archivist on the day before the effective date of this Act or the Administrator of General Services in the exercise of such functions immediately preceding their transfer; and that statutory requirements relating to notice, hearings, action upon the record, or administrative review that apply to any function transferred by this Act shall apply to the exercise thereof by the Archivist.

Section 106—Reference

Section 106 provides that, with respect to any functions transferred by this Act and exercised after the effective date of this Act, reference in any other Federal law to the office of the Archivist of the United States as in existence on the date before the effective date of this Act, or the National Archives and Records Service of the General Services Administration, or any office or officer thereof, shall be deemed to refer to the Archivist or the Administration.

Section 107—Conforming Amendments

Section 107 amends current laws to conform them to reflect the establishment of the National Archives and Records Administration as an independent entity within the executive branch and the transfer of current authorities and responsibilities for archival, certain records management, and other functions from the Administrator of General Services to the Archivist of the United States. As used in this section-by-section analysis, the reference to "conforming amendments" means the replacement of references to the "Administrator of General Services" (or "Administrator") and "General Services Administration" with references to the "Archivist" and "National Archives and Records Administration" respectively, and the renumbering of sections pursuant to section 102(a)(1). Several sections of current law (specifically, sections 2111, 2904, and 2906 of title 44, U.S.C.) have been rewritten to effect a statutory codification of the existing division of authorities for records management functions as delegated by the Administrator of General Services to the Archivist of the United States and the Assistant Administrator, Office of Information Resources Management, on January 13, 1982

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Section 107(a) makes conforming amendments to sections 2107 through 2118, title 44, U.S.C, as those sections are renumbered by Section 102(a)(1) of the bill. Section 2115 (current law section 2111) is rewritten to reflect the shared authority of the Archivist and the Administrator of General Services in carrying out their respective duties under title 44 to obtain reports from Federal agencies and correction of violations of provisions of chapters 21, 25, 29, 31, and 33 of title 44.

Section 107(b) makes conforming amendments to other chapters of title 44, U.S.C.

Subparagraph (1) Makes conforming amendments to chapter 7 relating to transmitting to the Public Printer, revising for correction, and making marginal notes in new Public Laws and joint resolutions.

Subparagraphs (2) and (3) make conforming amendments to chapter 15 regarding the issuance of the Federal Register and the Code of Federal Regulations.

Subparagraph (4) strikes out a provision in chapter 15 prohibiting the use of certain authority of the Administrator of General Services to regroup, transfer, and distribute functions within GSA. Similar provisions in chapters 23 and 25 are stricken by subparagraphs (7) and (8).

Subparagraph (5) make a conforming amendment to chapter 17 regarding the receipt of certain congressional documents from the Public Printer.

Subparagraph (6) makes a conforming amendment to chapter 22 regarding presidential records. All authority in the President Records Act of 1978, P.L. 95-591, was vested directly in the Archivist.

Subparagraphs (9) through (11) make conforming amendments to chapter 25 pertaining to the National Historical Publications and Records Commission, including the authorization for its grants program which was most recently reauthorized through fiscal year 1988 by Public Law 98-189.

Subparagraphs (12) through (17) make conforming amendments to chapter 29, regarding the respective records management functions of the Archivist and the Administrator of General Services. Those respective functions are delineated in section 2904 which is rewritten by subparagraph (15). The Archivist shall provide guidance and assistance to Federal agencies with respect to ensuring adequate and proper documentation of the policies and transactions of the Federal Government and ensuring proper records disposition. The Administrator shall provide guidance and assistance to Federal agencies to ensure economical and effective records management by such agencies. This revision of section 2904 does not expand the authorities in current law 2904 but rather divides those authorities between the Archivist and the Administrator of General Services, and thus codifies the existing division of these authorities, as delegated by the Administrator of General Services on January 13, 1982. Similarly, Subparagraph (16) rewrites current law section 2906 to provide the inspection authority granted in that section to both the Archivist and the Administrator for the purpose of carrying out their respective records management duties. And, as with the revision of section 2904, this revision of section 2906

does not expand the authority to inspect in current law section 2906, but rather ensures that this authority is available to both the Archivist and the Administrator in carrying out their respective records management responsibilities.

Subparagraphs (18) through (21) make conforming amendments to chapter 31 regarding the records management responsibilities of Federal agencies and the respective records management responsibilities of the Archivist and the Administrator.

Subparagraphs (22) through (24) make conforming amendments to chapter 33 regarding the disposal of records. Substantive amendments to chapter 33 are made by sections 204 and 205 of the bill.

Subparagraphs (25) and (26) make conforming amendments to the Paperwork Reduction Act (44 U.S.C. 305 et seq.) to reflect the respective responsibilities of the Archivist and the Administrator of General Services regarding records management.

Section 107(c) makes conforming amendments to the Presidential Recordings and Materials Preservation Act (current 44 U.S.C. 2107 note).

Section 107(d) makes conforming amendments to title 1, U.S.C., regarding the receipt of Public Laws or joint resolutions, the publishing of newly-adopted Constitutional amendments, the preparation of the Statutes at Large, the authorization of the edition of the laws and treaties of the United States published by Little and Brown, and the dispensing with the publication in slip or pamphlet form of the code of Laws of the United States and the District of Columbia.

Section 107(e) makes conforming amendments to title 3, U.S.C., regarding the transmission of the credentials of Presidential Electors.

Section 107(f) makes conforming amendments to title 4, U.S.C., regarding the collection, preparation, and publication of the official papers relating to the territories from which the States of the United States were formed.

Section 107(g) makes conforming amendments to the Privacy Act of 1974, specifically replacing references to the Administrator of General Services in subsections (b)(6) and (l)(1) of 5 U.S.C. 552a with reference to the Archivist.

Section 107(h) amends section 5314 of title 5, U.S.C., adding the Archivist of the United States to those executive branch officials whose rate of pay is Level III.

Section 107(i) makes a conforming amendment to the Act of October 25, 1951 (25 U.S.C. 199a) regarding the prescription of rules and regulations governing the custody of the records of Indian tribes by the Oklahoma Historical Society of the State of Oklahoma.

Section 108—Definitions

Section 108 provides definitions for the terms "Archivist", "Administration", and "function", where those terms are used in sections 103 through 106 of the bill.

Section 109—Effective Date

Section 109 provides that the provisions of title I of the bill shall be effective 120 days after the date of enactment of the bill.

TITLE II

Section 201—Copying and Authenticating Charges

Section 201 amends section 2116(c) (current 2112(c)) to eliminate the Archivist's authority to charge a fee up to 10 percent above the cost of making reproductions and replace it with authority to charge fees which may include increments of cost based on the estimated replacement cost of equipment.

Section 202—National Archives Trust Fund Board

Section 202(a) amends sections 2302 through 2305 of title 44, U.S.C., relating to the National Archives Trust Fund and the authorities of the National Archives Trust Fund Board. Section 2302, regarding the authority of the Board, is rewritten to eliminate the Board's current authority to hire without regard to the civil service laws, replacing it with authority to hire in the competitive service and to utilize on a reimbursable basis the services and personnel of the National Archives and Records Administration and of other Federal agencies to assist in the administration of the trust fund and in the preparation and publication of special works and collections and historical photographic materials and sound recordings. Also, new section 2302(8) adds a duty to submit an annual report to Congress, broken down by account, of income to and expenditures from the trust fund. Section 2303 is amended to confine the usual powers and obligations of a trustee, as possessed by the Board, to such as are otherwise provided for in this chapter (Chapter 23, title 44, U.S.C.). Section 2304 is amended to remove the Board's authority to compensate employees of the trust fund from the trust fund. Section 2305 is amended to add the authority to solicit, as well as accept, gifts or bequests and to require the moneys to be deposited into the trust fund be so deposited within 10 working days of the receipt thereof.

Section 202(b) rewrites section 2307 of title 44, U.S.C., relating to the trust fund account, to eliminate a reference to the Division of Disbursement of the Treasury Department and to provide that sales of publications and releases and the issuance of vouchers authorizing disbursements from the trust fund may be authorized by the Archivist acting in his capacity of Archivist rather than, as in current law, as Chairman of the National Archives Trust Fund Board.

Section 203—Authority to Litigate

Section 203 amends sections 2905(a) and 3106, regarding, in pertinent part, the responsibility of agency heads to initiate action through the Attorney General for the recovery of records unlawfully removed from the agency, to require the Archivist to initiate such an action through the Attorney General in any case in which the agency head fails to initiate such an action within a reasonable period of time after being notified of such unlawful action. The Archivist is also required to report the circumstances of any such failure of an agency head or of any refusal of the Attorney General to initiate such an action to the appropriate Committees of the Congress.

Section 204—Inspection of Records

Section 204 amends section 3301 to provide the Archivist with the authority to determine whether certain materials are "records" as that term is defined in section 3301 and used, pursuant to section 2901(1), in chapters 21, 25, 29, 31, and 33 of title 44, U.S.C. Section 204 also requires the Archivist to establish, by regulation, detailed criteria under which material shall be examined to determine if it is a record as defined in section 3301 and it authorizes the Archivist to have access to such materials.

Section 205—Public Notice

Section 205 amends section 3303a(a) to require the Archivist to publish notice in the Federal Register and provide an opportunity for interested persons to submit comments on any proposed authorization of disposal of records pursuant to this section.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 44, UNITED STATES CODE

Chap.	Sec.
1. Joint Committee on Printing.....	101
3. Government Printing Office.....	301
5. Production and Procurement of Printing and Binding	501
7. Congressional Printing and Binding	701
9. Congressional Record	901
11. Executive and Judiciary Printing and Binding	1101
13. Particular Reports and Documents.....	1301
15. Federal Register and Code of Federal Regulations.....	1501
17. Distribution and Sale of Public Documents.....	1701
19. Depository Library Program.....	1901
21. Archival Administration	2101
21. <i>National Archives and Records Administration</i>	2101
22. Presidential Records.....	2201
23. National Archives Trust Fund Board	2301
25. National Historical Publications and Records Commission	2501
29. Records Management by Administrator of General Services	2901
29. <i>Records Management by the Archivist of the United States and by the Administrator of General Services</i>	2901

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Chapter 7—Congressional Printing and Binding

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§710. Copies of Acts furnished to Public Printer

The **Administrator of General Services** *Archivist of the United States* shall furnish to the Public Printer a copy of every Act and joint resolution, as soon as possible after its approval by

the President, or after it has become a law under the Constitution without his approval.

§ 711. Printing Acts, joint resolutions, and treaties

The Public Printer, on receiving from the [Administrator of General Services] *Archivist of the United States* a copy of an Act or joint resolution, or from the Secretary of State, a copy of a treaty, shall print an accurate copy and transmit it in duplicate to the [Administrator of General Services] *Archivist of the United States* or to the Secretary of State, as the case may be, for revision. On the return of one of the revised duplicates, he shall make the marked corrections and print the number specified by section 709 of this title.

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§ 729. United States Statutes at Large: references in margins

The [Administrator of General Services] *Archivist of the United States* shall include in the references in margins of the United States Statutes at Large the number of the bill or joint resolution (designating S. for Senate bill, H.R. for House bill, S.J. Res. for Senate joint resolution and H.J. Res. for House joint resolution, as the case may be) under which each Act was approved and became a law, the reference in the margins to be placed within brackets immediately under the date of the approval of the Act at the beginning of each Act as printed beginning with Volume 32 of the United States Statutes at Large.

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CHAPTER 15—FEDERAL REGISTER AND CODE OF FEDERAL REGULATIONS

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§ 1502. Custody and printing of Federal documents; appointment of Director

The [Administrator of General Services,] *Archivist of the United States*, acting through the Office of the Federal Register, is charged with the custody and, together with the Public Printer, with the prompt and uniform printing and distribution of the documents required or authorized to be published by section 1505 of this title. There shall be at the head of the Office a director, appointed by, and who shall act under the general direction of, the [Administrator of General Services] *Archivist of the United States*, in carrying out this chapter and the regulations prescribed under it.

§ 1503. Filing documents with Office; notation of time; public inspection; transmission for printing

The original and two duplicate originals or certified copies of a document required or authorized to be published by section 1505 of this title shall be filed with the Office of the Federal Register, which shall be open for that purpose during all hours of the work-

ing days when the National Archives Building is open for official business. The **Administrator of General Services** *Archivist of the United States* shall cause to be noted on the original and duplicate originals or certified copies of each document the day and hour of filing. When the original is issued, prescribed, or promulgated outside the District of Columbia, and certified copies are filed before the filing of the original, the notation shall be of the day and hour of filing of the certified copies. Upon filing at least one copy shall be immediately available for public inspection in the Office. The original shall be retained by the **General Services** *National Archives and Records* Administration and shall be available for inspection under regulations prescribed by the **Administrator**, *Archivist*, unless such original is disposed of in accordance with disposal schedules submitted by the Administrative Committee of the Federal Register and authorized by the Administrator pursuant to regulations issued under chapter 33 of this title; however, originals of proclamations of the President and Executive orders shall be permanently retained by the Administration as part of the National Archives of the United States. The Office shall transmit immediately to the Government Printing Office for printing, as provided by this chapter, one duplicate original or certified copy of each document required or authorized to be published by section 1505 of this title. Every Federal agency shall cause to be transmitted for filing the original and the duplicate originals or certified copies of all such documents issued, prescribed, or promulgated by the agency.

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§ 1506. Administrative Committee of the Federal Register; establishment and composition; powers and duties

The Administrative Committee of the Federal Register shall consist of the Archivist of the United States of Acting Archivist, who shall be chairman, an officer of the Department of Justice designated by the Attorney General, and the Public Printer or Acting Public Printer. The Director of the Federal Register shall act as secretary of the committee. **[The authority of the Administrator of General Services, under section 754 of title 40, to regroup, transfer and distribute functions within the General Services Administration, does not extend to the Committee or its functions.]** The committee shall prescribe, with the approval of the President, regulations for carrying out this chapter. The regulations shall provide, among other things—

- (1) the manner of certification of copies required to be certified under section 1503 of this title, which certification may be permitted to be based upon confirmed communications from outside the District of Columbia;
- (2) the documents which shall be authorized under section 1505(b) of this title to be published in the Federal Register.
- (3) the manner and form in which the Federal Register shall be printed, reprinted, and compiled, indexed, bound, and distributed;
- (4) the number of copies of the Federal Register, which shall be printed, reprinted, and compiled, the number which shall be

distributed without charge to Members of Congress, officers and employees, of the United States, or Federal agency, for official use, and the number which shall be available for distribution to the public; and

(5) the prices to be charged for individual copies of, and subscriptions to, the *Federal Register* and reprints and bound volumes of it.

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CHAPTER 17—DISTRIBUTION AND SALE OF PUBLIC DOCUMENTS

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§ 1714. Publications for use of General Services Administration

The Public Printer shall print and deliver to the [General Services] *National Archives and Records* Administration for use by the Archivist of the United States, including use by the Presidential Library established for the President during whose term the documents were issued, which shall be chargeable to Congress three copies each of the following publications:

House documents and public reports, bound;

Senate documents and public reports, bound;

Senate and House journals, bound;

United States Statutes at Large, bound;

United States Code and Supplement, bound;

the United States Reports, bound;

all other documents bearing a congressional number, or printed upon order of a committee in either House of Congress, or of a department, independent agency or establishment, commission, or officer of the Government, except confidential matter, blank forms, and circular letters not of a public character; and

public bills and resolutions in Congress in each parliamentary stage.

The Superintendent of Documents shall furnish, without cost, copies of publications available for free distribution.

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[CHAPTER 21—ARCHIVAL ADMINISTRATION

[Sec.

[2101. Definitions.

[2102. Archivist of the United States.

[2103. Acceptance of records for historical preservation.

[2104. Responsibility for custody, use, and withdrawal of records.

[2105. Preservation, arrangement, duplication, exhibition of records.

[2106. Servicing records.

[2107. Material accepted for deposit.

[2108. Presidential archival depository.

[2109. Depository for agreements between States.

[2110. Preservation of motion-picture films, still pictures, and sound recordings.

[2111. Reports; correction of violations.

[2112. Legal status of reproductions; official seal; fees for copies and reproductions.

[2113. Limitation on liability.
[2114. Records of Congress.]

CHAPTER 21—NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Sec.

- 2101. *Definitions.*
- 2102. *Establishment.*
- 2103. *Officers.*
- 2104. *Administrative provisions.*
- 2105. *Personnel and services.*
- 2106. *Reports to Congress.*
- 2107. *Acceptance of records for historical preservation.*
- 2108. *Responsibility for custody, use, and withdrawal of records.*
- 2109. *Preservation, arrangement, duplication, exhibition of records.*
- 2110. *Servicing records.*
- 2111. *Material accepted for deposit.*
- 2112. *Presidential archival depository.*
- 2113. *Depository for agreements between States.*
- 2114. *Preservation of motion-picture films, still pictures, and sound recordings.*
- 2115. *Reports; correction of violations.*
- 2116. *Legal status of reproductions; official seal, fees for copies and reproductions.*
- 2117. *Limitation on liability.*
- 2118. *Records of Congress.*

§ 2101. Definitions

As used in [sections 2103–2113 of this title] *this chapter*—

(1) “*Presidential archival depository*” means an institution operated by the United States to house and preserve the papers and book of a President or former President of the United States, together with other historical materials belonging to a President or former President of the United States, or related to his papers or to the events of his official or personal life;

(2) “*historical materials*” including books, correspondence, documents, papers, pamphlets, works of art, models, pictures, photographs, plats, maps, films, motion pictures, sound recordings, and other objects or materials having historical or commemorative value [.]:

(3) “*Archivist*” means the Archivist of the United States appointed under section 2103;

(4) “*Administration*” means the National Archives and Records Administration established under section 2102; and

(5) “*Federal agency*”, notwithstanding section 2901(13), means any executive department, military department, Government corporation, Government-controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), any independent regulatory agency, or any establishment in the legislative or judicial branch of the Government (except the Senate and the House of Representatives).

§ 2102. Archivist of the United States

[The Administrator of General Services shall appoint the Archivist of the United States.]

S 2102. Establishment

There shall be an independent establishment in the executive branch of the Government to be known as the National Archives and Records Administration. The Administration shall be administered under the supervision and direction of the Archivist.

S 2103. Officers

(a) The Archivist of the United States shall be appointed by the President by and with the advice and consent of the Senate. The Archivist shall be appointed without regard to political affiliations and solely on the basis of the professional qualifications required to perform the duties and responsibilities of the office of Archivist. The Archivist may be removed from office by the President. The President shall communicate the reasons for any such removal to each House of the Congress.

(b) The Archivist shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5.

(c) There shall be in the Administration a Deputy Archivist of the United States, who shall be appointed by and who shall serve at the pleasure of the Archivist. The Deputy Archivist shall be established as a career reserved position in the Senior Executive Service within the meaning of section 3132(a)(8) of title 5. The Deputy Archivist shall perform such functions as the Archivist shall designate. During any absence or disability of the Archivist, the Deputy Archivist shall act as Archivist. In the event of a vacancy in the office of the Archivist, the Deputy Archivist shall act as Archivist until an Archivist is appointed under subsection (a).

S 2104. Administrative provisions

(a) The Archivist shall prescribe such policies, standards, criteria, procedures, rules, and regulations as the Archivist finds necessary or appropriate to carry out the functions of the Administration. The head of each Federal agency shall issue such orders and directives as may be necessary to conform the activities of the agency with the policies, standards, criteria, procedures, rules, and regulations prescribed by the Archivist.

(b) Except as otherwise expressly provided by law, the Archivist may delegate functions to designated officers and employees of the Administration, and may authorize such successive redelegations of such functions as the Archivist may deem to be necessary or appropriate. A delegation of functions by the Archivist shall not relieve the Archivist of responsibility for the administration of such functions.

(c) The Archivist is authorized to establish, maintain, alter, or discontinue such regional, local or other field offices as the Archivist finds necessary or appropriate to perform the functions of the Archivist or the Administration.

(d) The Archivist may establish advisory committees to advise him with respect to any function of the Archivist or the Administration. Members of any such committee shall serve without compensation but shall be entitled to transportation expenses and per diem in lieu of subsistence in accordance with section 5703 of title 5.

(e) *The Archivist shall advise and consult with interested Federal agencies with a view to obtaining their advice and assistance in carrying out the purposes of this chapter.*

(f) *Each Federal agency is required to furnish to the Archivist, upon request, any information or other data which the Archivist finds necessary to carry out the duties of the Archivist.*

(g) *If authorized by the Archivist, officers and employees of the Administration having investigatory functions are empowered, while engaged in the performance of their duties in conducting investigations, to administer oaths.*

§ 2105. Personnel and services

(a) *The Archivist is authorized to select, appoint, employ, and fix the compensation of such officers and employees, pursuant to part III of title 5, as are necessary to perform the functions of the Archivist and the Administration.*

(b) *The Archivist is authorized to obtain the services of experts and consultants under section 3109 of title 5.*

(c) *Notwithstanding the provisions of section 973 of title 10 or any other provision of law, the Archivist, in carrying out the functions of the Archivist or the Administration, is authorized to utilize in the Administration the services of officials, officers, and other personnel in other Federal agencies, including personnel of the armed services, with the consent of the head of the agency concerned.*

(d) *The Archivist is authorized to accept and utilize voluntary and uncompensated services.*

§ 2106. Reports of Congress

The Archivist shall submit to the Congress, in January of each year and at such other times as the Archivist finds appropriate, a report concerning the administration of functions of the Archivist and the Administration.

§ [2103.] 2107. Acceptance of records of historical preservation

When it appears to the [Administrator of General Services] Archivist to be in the public interest, he may—

(1) accept for deposit with the National Archives of the United States the records of a Federal agency or the Congress determined by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the United States Government;

(2) direct and effect the transfer to the National Archives of the United States of records of a Federal agency that have been in existence for more than thirty years and determined by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the United States Government, unless the head of the agency which has custody of them certified in writing to the [Administrator] Archivist that they must be retained in his custody for use in the conduct of the regular current business of the agency;

(3) direct and effect, with the approval of the head of the originating agency, or if the existence of the agency has been terminated, then with the approval of his successor in func-

tion, if any, the transfer of records, deposited or approved for deposit with the National Archives of the United States to public or educational institutions or associations; title to the records to remain vested in the United States unless otherwise authorized by Congress; and

(4) transfer materials from private sources authorized to be received by the **Administrator Archivist** by section **[2107] 2111** of this title.

§ [2104.] 2108. Responsibility for custody, use, and withdrawal of records

(a) The **Administrator of General Services Archivist** shall be responsible for the custody, use, and withdrawal of records transferred to him. When records, the use of which is subject to statutory limitations and restrictions, are so transferred, permissive and restrictive statutory provisions with respect to the examination and use of records applicable to the head of the agency from which the records were transferred or to employees of that agency are applicable to **[the Administrator, the Archivist of the United States, and to the employees of the General Services Administration,] the Archivist and to the employees of the National Archives and Records Administration**, respectively. Except as provided in subsection (b) of this section, when the head of a Federal agency states, in writing, restrictions that appear to him to be necessary or desirable in the public interest with respect to the use or examination of records being considered for transfer from his custody to the **Administrator of General Services,] Archivist**, the **[Administrator] Archivist** shall, if he concurs, **[and in consultation with the Archivist of the United States,]** impose such restrictions on the records so transferred, and may not relax or remove such restrictions without the written concurrence of the head of the agency from which the material was transferred, or of his successor in function, if any. In the event that a Federal agency is terminated and there is no successor in function, the **[Administrator] Archivist**, is authorized to relax, remove, or impose restrictions on such agency's records when he determines that such action is in the public interest. Statutory and other restrictions referred to in this subsection shall remain in force until the records have been in existence for thirty years unless the **[Administrator of General of Services] Archivist**, by order, having consulted with **[the Archivist and]** the head of the transferring Federal agency or his successor in function, determines, with respect to specific bodies of records, that for reasons consistent with standards established in relevant statutory law, such restrictions shall remain in force for a longer period. Restriction on the use or examination of records deposited with the National Archives of the United States imposed by section 3 of the National Archives Act, approved June 19, 1934, shall continue in force regardless of the expiration of the tenure of office of the official who imposed them but may be removed or relaxed by the **[Administrator] Archivist**, with the concurrence in writing of the head of the agency from which material was transferred or of his successor in function, if any.

(b) With regard to the census and survey records of the Bureau of the Census containing data identifying individuals enumerated

in population censuses, any release pursuant to this section of such identifying information contained in such records shall be made by the [Administrator of General Services] Archivist, pursuant to the specifications and agreements set forth in exchange of correspondence on or about the date of October 10, 1952, between the Director of the Bureau of the Census and the Archivist of the United States, together with all amendments thereto, now or hereafter entered into between the Director of the Bureau of the Census and the Archivist of the United States. Such amendments, if any, shall be published in the Register.

§ [2105.] 2109. Preservation, arrangement, duplication, exhibition of records

The [Administrator of General Services] Archivist shall provide for the preservation, arrangement, repair and rehabilitation, duplication and reproduction (including microcopy publications), description, and exhibition of records or other documentary material transferred to him as may be needful or appropriate, including the preparation and publication of inventories, indexes, catalogs, and other finding aids or guides to facilitate their use. He may also prepare guides and other finding aids to Federal records and, when approved by the National Historical Publications and Records Commission, publish such historical works and collections of sources as seem appropriate for printing or otherwise recording at the public expense.

§ [2106.] 2110. Servicing records

The [Administrator of General Services] Archivist shall provide and maintain facilities he considers necessary or desirable for servicing records in his custody that are not exempt from examination by statutory or other restrictions.

§ [2107.] 2111. Material accepted for deposit

When the [Administrator of General Services] Archivist considers it to be in the public interest he may accept for deposit—

(1) the papers and other historical materials of a President or former President of the United States, or other official or former official of the Government, and other papers relating to and contemporary with a President or former President of the United States, subject to restrictions agreeable to the [Administrator] Archivist as to their use; and

(2) documents, including motion-picture films, still pictures, and sound recordings, from private sources that are appropriate for preservation by the Government as evidence of its organization, functions, policies, decisions, procedures, and transactions.

This section shall not apply in the case of any Presidential records which are subject to the provisions of chapter 22 of this title.

§ [2108.] 2112. Presidential archival depository

(a) When the [Administrator of General Services] Archivist considers it to be in the public interest he may accept, for and in the name of the United States, land, buildings, and equipment offered as a gift to the United States for the purposes of creating a Presi-

dential archival depository, and take title to the land, buildings, and equipment on behalf of the United States, and maintain, operate, and protect them as a Presidential archival depository, and as part of the national archives system; and make agreements, upon terms and conditions he considers proper, with a State, political subdivision, university, institution of higher learning, institute, or foundation to use as a Presidential archival depository land, buildings, and equipment of the State, subdivision, university, or other organization, to be made available by it without transfer of title to the United States, and maintain, operate, and protect the depository as a part of the national archives system.

The **Administrator Archivist** shall submit a report in writing on a proposed Presidential archival depository to the President of the Senate and the Speaker of the House of Representatives, and include—

- a description of the land, buildings, and equipment offered as a gift or to be made available without transfer of title;
- a statement of the terms of the proposed agreement, if any;
- a general description of the types of paper, documents, or other historical materials proposed to be deposited in the Presidential archival depository so to be created, and of the terms of the proposed deposit;
- a statement of the additional improvements and equipment, if any, necessary to the satisfactory operation of the depository, together with an estimate of the cost; and
- an estimate of the annual cost to the United States of maintaining, operating, and protecting the depository.

The **Administrator Archivist** may not take title to land, buildings, and equipment or make an agreement, until the expiration of the first period of 60 calendar days of continuous session of the Congress following the date on which the report is transmitted, computed as follows:

Continuity of session is broken only by an adjournment sine die, but the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded.

(b) When the **Administrator Archivist** considers it to be in the public interest, he may deposit in a Presidential archival depository papers, documents, or other historical materials accepted under section **2107** *2111* of this title, or Federal records appropriate for preservation.

(c) When the **Administrator Archivist** considers it to be in the public interest, he may exercise, with respect to papers, documents, or other historical materials deposited under this section, or otherwise, in a Presidential archival depository, all the functions and responsibilities otherwise vested in him pertaining to Federal records or other documentary materials in his custody or under his control. The **Administrator Archivist**, in negotiating for the deposit of Presidential historical materials, shall take steps to secure to the Government, as far as possible, the right to have continuous and permanent possession of the materials. Papers, documents, or other historical materials accepted and deposited under section **2107** *2111* of this title and this section are subject to restrictions as to their availability and use stated in writing by the donors or deposi-

tors, including the restriction that they shall be kept in Presidential archival depository. The restrictions shall be respected for the period stated, or until revoked or terminated by the donors or depositors or by persons legally qualified to act on their behalf. Subject to the restrictions, the **[Administrator] Archivist** may dispose by sale, exchange, or otherwise, of papers, documents, or other materials which the Archivist determines to have no permanent value or historical interest or to be surplus to the needs of a Presidential archival depository. Only the first two sentences of this subsection shall apply to Presidential records as defined in section 2201(2) of this title.

(d) When the **[Administrator] Archivist** considers it to be in the public interest, he may cooperate with and assist a university, institution of higher learning, institute, foundation, or other organization or qualified individual to further or to conduct study or research in historical materials deposited in a Presidential archival depository.

(e) When the **[Administrator] Archivist** considers it to be in the public interest, he may charge and collect reasonable fees for the privilege of visiting and viewing exhibit rooms or museum space in a Presidential archival depository.

(f) When the **[Administrator] Archivist** considers it to be in the public interest, he may provide reasonable office space in a Presidential archival depository for the personal use of a former president of the United States.

(g) When the **[Administrator] Archivist** considers it to be in the public interest, he may accept gifts or bequests of money or other property for the purpose of maintaining, operating, protecting, or improving a Presidential archival depository. The proceeds of gifts or bequests, together with the proceeds from fees or from sales of historical materials, copies or reproductions, catalogs, or other items, having to do with a Presidential archival depository, shall be paid into the National Archives Trust Fund to be held, administered, and expended for the benefit and in the interest of the Presidential archival depository in connection with which they were received, including administrative and custodial expenses as the **[Administrator] Archivist** determines.

§[2109.] 2113. Depository for agreements between States

The **[Administrator of General Services] Archivist** may receive duplicate originals or authenticated copies of agreements or compacts entered into under the Constitution and laws of the United States, between States of the Union, and take necessary actions for their preservation and servicing.

§[2110.] 2114. Preservation of motion-picture films, still pictures, and sound recordings

The **[Administrator of General Services] Archivist** may make and preserve motion-picture films, still pictures, and sound recordings pertaining to and illustrative of the historical development of the United States Government and its activities, and provide for preparing, editing, titling, scoring, processing, duplicating, reproducing, exhibiting, and releasing for non-profit educational pur-

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poses, motion-picture films, still pictures, and sound recordings in his custody.

§ [2111.] 2115. Reports; correction of violations

[(a) When the Administrator of General Services considers it necessary, he may obtain reports from Federal agencies on their activities under chapters 21, 25, 27, 29, 31, and 33 of this title.

[(b) When the Administrator finds that a provision of chapter 21, 25, 27, 29, 31, or 33 of this title has been or is being violated, he shall inform in writing the head of the agency concerned of the violation and make recommendations for its correction. Unless corrective measures satisfactory to the Administrator are inaugurated within a reasonable time, the Administrator shall submit a written report of the matter to the President and the Congress.]

(a) In carrying out their respective duties and responsibilities under chapters 21, 25, 29, 31, and 33 of this title, the Archivist and the Administrator may each obtain reports from Federal agencies on such agency's activities under such chapters.

(b) When either the Archivist or the Administrator finds that a provision of any such chapter has been or is being violated, the Archivist or the Administrator shall (1) inform in writing the head of the agency concerned of the violation and make recommendations for its correction; and (2) unless satisfactory corrective measures are inaugurated within a reasonable time, submit a written report of the matter to the President and the Congress.

§ [2112.] 2116. Legal status of reproductions; official seal; fees for copies and reproductions

(a) When records that are required by statute to be retained indefinitely have been reproduced by photographic, microphotographic, or other processes, in accordance with standards established by the [Administrator or General Services] Archivist the indefinite retention by the photographic, microphotographic, or other reproductions constitutes compliance with the statutory requirement for the indefinite retention of the original records. The reproductions, as well as reproductions made under regulations to carry out chapter 21, 29, 31, and 33 of this title, shall have the same legal status as the originals.

(b) There shall be an official seal for the National Archives of the United States which shall be judicially noticed. When a copy or reproduction, furnished under this section, is authenticated by the official seal and certified by the [Administrator], Archivist, the copy or reproduction shall be admitted in evidence equally with the original from which it was made.

[(c) The Administrator may charge a fee not in excess of 10 percent above the costs or expenses for making or authenticating copies or reproductions of materials transferred to his custody. Fees shall be paid into, administered, and expended as a part of the National Archives Trust Fund. He may not charge for making or authenticating copies or reproductions of materials for official use by the United States Government. Reimbursement may be accepted to cover the cost of furnishing copies or reproductions that could not otherwise be furnished.]

(c) The Archivist may charge a fee set to recover the costs for making or authenticating copies or reproductions of materials transferred to his custody. Such fee shall be fixed by the Archivist at a level which will recover, so far as practicable, all elements of such costs, and may, in the Archivist's discretion, include increments for the estimated replacement cost of equipment. Such fees shall be paid into, administered, and expended as a part of the National Archives Trust Fund. The Archivist may not charge for making or authenticating copies or reproductions of materials for official use by the United States Government unless appropriations available to the Archivist for this purpose are insufficient to cover the cost of performing the work.

§ [2113.] 2117. Limitation on liability

When letters and other intellectual productions (exclusive of patented material, published works under copyright protection, and unpublished works for which copyright registration has been made) come into the custody or possession of the [Administrator of General Services,] Archivist the United States or its agents are not liable for infringement of copyright or analogous rights arising out of use of the materials for display, inspection, research, reproduction, or other purposes.

§ [2114.] 2118. Records of Congress

The Secretary of the Senate and the Clerk of the House of Representatives, acting jointly, shall obtain at the close of each Congress all the noncurrent records of the Congress and of each congressional committee and transfer them to the [General Services] National Archives and Records Administration for preservation, subject to the orders of the Senate or the House of Representatives, respectively.

CHAPTER 22—PRESIDENTIAL RECORDS

* * * * *

§ 2204. Restrictions on access to Presidential records

(a) * * *

* * * * *

(c)(1) Subject to the limitations on access imposed pursuant to subsections (a) and (b), Presidential records shall be administered in accordance with section 552 of title 5, United States Code, except that paragraph (b)(5) of that section shall not be available for purposes of withholding any Presidential record, and for the purposes of such section such records shall be deemed to be records of the National Archives and Records [Service of the General Services] Administration. Access to such records shall be granted on nondiscriminatory terms.

* * * * *

§ 2205. Exceptions to restricted access

Notwithstanding any restrictions on access imposed pursuant to section 2204—

(1) the Archivist and persons employed by the National Archives and Records [Service of the General Services] Administration who are engaged in the performance of normal archival work shall be permitted access to Presidential records in the custody of the Archivist;

(2) subject to any rights, defenses, or privileges which the United States or any agency or person may invoke, Presidential records shall be made available—

(A) pursuant to subpena or other judicial process issued by a court of competent jurisdiction for the purposes of any civil or criminal investigation proceeding;

(B) to an incumbent President if such records contain information that is needed for the conduct of current business of his office and that is not otherwise available; and

(C) to either House of Congress, or, to the extent of matter within its jurisdiction, to any committee or subcommittee thereof if such records contain information that is needed for the conduct of its business and that is not otherwise available; and

(3) the Presidential records of a former President shall be available to such former President or his designated representative.

* * * * *

CHAPTER 23—NATIONAL ARCHIVES TRUST FUND BOARD

Sec.

2301. Establishment of Board; membership.

2302. Authority of Board; seal; [employees;] services; annual report; bylaws, rules, regulations.

* * * * *

§ 2301. Establishment of Board; membership

The National Archives Trust Fund Board shall consist of the Archivist of the United States, as Chairman, and the Secretary of the Treasury and the Chairman of the National Endowment for the Humanities. [The authority of the Administrator of General Services under section 754 of title 40 to regroup, transfer, and distribute functions within the General Services Administration does not extend to the Board or its functions.] Membership on the Board is not an office within the meaning of the statutes of the United States.

[§ 2302. Authority of Board; seal; employees; bylaws, rules, regulations]

[In carrying out the purposes of this chapter, the Board may—
[1] adopt an official seal, which shall be judicially noticed;

【(2) appoint, or authorize the Chairman to appoint, without regard to the civil-service laws, necessary employees, and fix their duties; and

【(3) adopt bylaws, rules, and regulations necessary for the administration of its functions under this chapter.

【§ 2303. Powers and obligations of Board; liability of members

【The Board shall have all the usual powers and obligations of a trustee with respect to property and funds administered by it, but the members of the Board are not personally liable, except for malfeasance.

【§ 2304. Compensation of members; availability of trust funds for expenses of Board

【Compensation may not be paid to the members of the Board for their services as members. Costs incurred by the Board in carrying out its duties under this chapter, including the expenditures necessarily made by the members of the Board in the performance of their duties and the compensation of persons employed by the Board, shall be paid out of income from trust funds available to the Board for the purpose. Unless otherwise restricted by the instrument of gift or bequest, the Board, by resolution, may authorize the Chairman to use for these purposes, or for any other purpose, for which funds may be expended under this chapter, the principal of a gift or bequest accepted under this chapter.

【§ 2305. Acceptance of gifts

【The Board may accept, receive, hold, and administer gifts or bequests of money, securities, or other personal property, for the benefit of or in connection with the national archival and records activities administered by the General Services Administration as may be approved by the Board.】

§ 2302. Authority of the Board; seal; services; annual report; bylaws; rules; regulations

In carrying out the purposes of this chapter, the Board—

(1) may adopt an official seal, which shall be judicially noticed;

(2) may utilize on a reimbursable basis the services and personnel of the National Archives and Records Administration necessary (as determined by the Archivist to assist the Board in the administration of the trust fund, and in the preparation and publication of special works and collections of sources and preparation, duplication, editing, and release of historical photographic materials and sound recordings and may utilize on a reimbursable basis the services and personnel of other Federal agencies for such purposes;

(3) shall submit to the Congress an annual report, by account, of the moneys, securities, and other personal property received and held by it, and of its operations, which shall include a listing of the purposes for which funds are transferred to the National Archives and Records Administration for expenditure and to other Federal agencies;

- (4) may adopt bylaws, rules, and regulations necessary for the administration of its functions under this chapter; and
- (5) may, subject to the laws and regulations governing appointments in the competitive service, appoint and fix the compensation of such personnel as may be necessary to carry out its functions.

S 2303. Powers and obligations of the Board; liability of members

Except as otherwise provided by this chapter, the Board shall have all the usual powers and obligations of a trustee with respect to property and funds administered by it, but the members of the Board are not personally liable, except for malfeasance.

S 2304. Compensation of members; availability of trust funds for expenses of the Board

Compensation may not be paid to the members of the Board for their services as members. Costs incurred by the Board in carrying out its duties under this chapter, including the obligations necessarily incurred by the members of the Board in the performance of their duties, shall be paid by the Archivist of the United States from trust funds available to the Board for this purpose. The Board, by resolution, may authorize the transfer of funds (including the principal or interest of a gift or bequest) to the National Archives and Records Administration to be expended on an archival or records activity approved by the Board or to accomplish the purpose of a gift or bequest.

S 2305. Acceptance of gifts

The Board may solicit and accept gifts or bequests of money, securities, or other personal property, for the benefit of or in connection with the national archival and records activities administered by the National Archives and Records Administration. Moneys that are for deposit into the trust fund shall be deposited within 10 working days of the receipt thereof.

* * * * *

[§ 2307. Trust fund account; disbursements; sales of publications and releases]

[The income from trust funds held by the Board, and the proceeds from the sale of securities and other personal property, as and when collected, shall be covered into the Treasury of the United States in a trust fund account to be known as the National Archives Trust Fund, subject to disbursement by the Division of Disbursement, Treasury Department, on the basis of certified vouchers of the Chairman or his authorized agent, unless otherwise restricted by the instrument of gift or bequest, for and in the interest of the national archival and records activities administered by the General Services Administration, including but not restricted to the preparation and publication of special works and collections of sources and the preparation, duplication, editing, and release of historical photographic materials and sound recordings. The Chairman may sell publications and releases authorized by this section and paid for out of the income derived from trust funds at a price

which will cover their cost plus 10 percent, and moneys received from these sales shall be paid into, administered, and expended as part of the National Archives Trust Fund.]

S 2307. Trust fund account; disbursements; sale of publications and releases

The income from trust funds held by the Board and the proceeds from the sale of securities and other personal property, as and when collected, shall be covered into the Treasury of the United States in a trust fund account to be known as the National Archives Trust Fund, subject to disbursement on the basis of certified vouchers of the Archivist of the United States (or his designee) for activities approved by the Board and in the interest of the National archival and records activities administered by the National Archives and Records Administration, including but not restricted to the preparation and publication of special works, and collections of sources and the preparation, duplication, editing, and release of historical photographic materials and sound recordings. The Archivist may sell publications and releases authorized by this section and paid for out of the income derived from trust funds at a price which will cover their cost, plus 10 percent, and moneys received from these sales shall be paid into, administered, and expended as part of the National Archives Trust Fund.

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CHAPTER 25—NATIONAL HISTORICAL PUBLICATIONS AND RECORDS COMMISSION

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S 2501. Creation; composition; appointment and tenure

The National Historical Publications and Record Commission shall consist of the Archivist of the United States (or an alternate designated by him), who shall be Chairman; the Librarian of Congress (or an alternate designated by him); one Senator to be appointed, for a term of four years, by the President of the Senate; one Representative to be appointed, for a term of two years, by the Speaker of the House of Representatives; one member of the judicial branch of the Government to be appointed, for a term of four years, by the Chief Justice of the United States; one representative of the Department of State to be appointed, for a term of four years, by the Secretary of State; one representative of the Department of Defense to be appointed, for a term of four years, by the Secretary of Defense; two members of the American Historical Association to be appointed for terms of four years by the council of the Association; two members of the Organization of American Historians to be appointed for terms of four years by the Executive Board of the Organization, one of whom shall be appointed for an initial term of two years, and whose successors shall each serve four years; two members of the Society of American Archivists to be appointed, for terms of four years, by the Society of American Archivists; two members of the American Association for State and Local History to be appointed, for terms of four years, by the

American Association for State and Local History; and two other members outstanding in the fields of the social or physical science to be appointed for terms of four years by the President of the United States.

The Commissions shall meet annually and on call of the Chairman.

[The authority of the Administrator of General Service under section 754 of title 40 to regroup, transfer, and distribute functions within the general Services Admininstration does not extend to the Commission or its functions.]

* * * * *

§ 2504. Duties; authorization of grants for collection, reproduction, and publication of documentary historical source material

(a) The Commission shall make plans, estimates, and recommendations for historical works and collections of sources, it considers appropriate for printing or otherwise recording at the public expense. It shall also cooperate with and encourage appropriate Federal, State, and local agencies and nongovernmental institutions, societies, and individuals in collecting and preserving and, when it considers it desirable, in editing and publishing the papers of outstanding citizens of the United States, and other documents as may be important for an understanding and appreciation of the history of the United States. The **[Administrator of General Services]** *Archivist of the United States* may, within the limits of available appropriated and donated funds, make allocations to Federal agencies, and grants to State and local agencies and to nonprofit organizations and institutions, for the collecting, describing, preserving and compiling, and publishing (including microfilming and other forms of reproduction) of documentary sources significant to the history of the United States. Before making allocations and grants, the **[Administrator]** *Archivist* should seek the advice and recommendations of the National Historical Publications Commission. The Chairman of the Commission shall **[transmit to the Administrator]** *make available to the public* from time to time, and at least annually, plans, estimates, and recommendations approved by the Commission.

(b) For the purposes specified in subsection (a), there is authorized to be appropriated to the **[General Services]** *National Archives and Records* Administration an amount not to exceed \$4,000,000 for each of the fiscal years ending on September 30, 1984, and September 30, 1985; and an amount not to exceed \$5,000,000 for each of the fiscal years ending on September 30, 1986, September 30, 1987, and September 30, 1988. Amounts appropriated under this subsection shall be available until expended when so provided in appropriation Acts.

* * * * *

§ 2506. Records to be kept by grantees

(a) Each recipient of grant assistance under section 2504 of this title shall keep such records as the **[Administrator of General**

Services] *Archivist of the United States* prescribes, including records which fully disclose the amount and disposition by the recipient of the proceeds of the grants, the total cost of the project or undertaking in connection with which funds are given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and any other records as will facilitate an effective audit.

(b) The [Administrator] *Archivist* and the Comptroller General of the United States or their authorized representatives shall have access for the purposes of audit and examination to books, documents, papers, and records of the recipients that are pertinent to the grants received under section 2504 of this title.

§ 2507. Report to Congress

The [Administrator of General Services] *Archivist of the United States* shall make an annual report to the Congress concerning projects undertaken and carried out under section 2504 of this title, including detailed information concerning the receipt and use of all appropriated and donated funds made available to him.

* * * * *

CHAPTER 29—[RECORDS MANAGEMENT BY ADMINISTRATOR OF GENERAL SERVICES] *RECORDS MANAGEMENT BY THE ARCHIVIST OF THE UNITED STATES AND BY THE ADMINISTRATOR OF GENERAL SERVICES*

* * * * *

§ 2901. Definitions

As used in this chapter and chapters 21, 25, [27,] 31, and 33 of this title—

(1) the term “records” has the meaning given it by section 3301 of this title;

(2) the term “records management” means the planning, controlling, directing, organizing, training, promoting, and other managerial activities involved with respect to records creation, records maintenance and use, and records disposition *to achieve adequate and proper documentation of the policies and transactions of the Federal Government and effective and economical management of agency operations;*

(6) the term “records center” means an establishment maintained and operated by the [Administrator] *Archivist* or by another Federal agency primarily for the storage, servicing, security, and processing of records which need to be preserved for varying periods of time and need not be retained in office equipment or space;

* * * * *

(9) the term "servicing" means making available for use information in records and other materials in the custody of the [Administrator,] Archivist, or in a records center—

(A) by furnishing the records or other materials, or information from them, or copies or reproductions thereof, to any Federal agency for official use, or to the public; or

(B) by making and furnishing authenticated or unauthenticated copies or reproductions of the records or other materials;

* * * * *

(11) the term "National Archives of the United States" means those official records which have been determined by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the Federal Government, and which have been accepted by the [Administrator] Archivist for deposit in his custody;

(12) the term "Archivist" means the Archivist of the United States;

[12] (13) the term "Administrator" means the Administrator of General Services;

[13] (14) the terms "executive agency" and "Federal agency" shall have the meanings given such terms by subsections (a) and (b), respectively, of section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472 (a) and (b)).

§ 2902. Objectives of records management

It is the purpose of this chapter, and chapters 21, 31, and 33 of this title, to require the establishment of standards and procedures to assure efficient and effective records management. Such records management standards and procedures shall seek to implement the following goals:

* * * * *

(7) Establishment and maintenance of such other systems or techniques as the Administrator or the Archivist considers necessary to carry out the purposes of this chapter, and chapters 21, 31, and 33 of this title.

§ 2903. Custody and control of property

The [Administrator] Archivist shall have immediate custody and control of the National Archives Building and its contents, and may design, construct, purchase, lease, maintain, operate, protect, and improve buildings used by him for the storage of records of Federal agencies in the District of Columbia and elsewhere.

§ 2904. General responsibilities of Administrator

[The Administrator shall provide guidance and assistance to Federal agencies with respect to records creation, records maintenance and use, and records disposition. In providing such guidance and assistance, the Administrator shall have responsibility to—

- █(1) promote economy and efficiency in the selection and utilization of space, staff, equipment, and supplies for records management;
- █(2) promulgate standards, procedures, and guidelines with respect to records management and records management studies;
- █(3) conduct research with respect to the improvement of records management practices and programs;
- █(4) serve as a clearinghouse for information with respect to records management and as a central source for reference and training materials with respect to records management;
- █(5) establish such interagency committees and boards as may be necessary to provide an exchange of information among Federal agencies with respect to records management;
- █(6) disseminate information with respect to technological development in records management;
- █(7) direct the continuing attention of Federal agencies and the Congress on the burden placed on the Federal Government by unnecessary paperwork, and on the need for adequate policies governing records creation, maintenance and use, and disposition;
- █(8) conduct records management studies and, in his discretion, designate the heads of executive agencies to conduct records management studies with respect to establishing systems and techniques designed to save time and effort in records management, with particular attention given to standards and procedures governing records creation;
- █(9) conduct inspections or records management studies which involve a review of the programs and practices of more than one Federal agency and which examine interaction among and relationships between Federal agencies with respect to records and records management; and
- █(10) report to the appropriate oversight and appropriations committees of the Congress and to the Director of the Office of Management and Budget annually and at such other times as the Administrator deems desirable (A) on the results of activities conducted pursuant to paragraphs (1) through (9) of this section, (B) on evaluations of responses by Federal agencies to any recommendations resulting from inspections or studies conducted under paragraphs (8) and (9) of this section, and (C) to the extent practicable, estimates of costs to the Federal Government resulting from the failure of agencies to implement such recommendations.]

S 2904. General responsibilities for records management

(a) The Archivist shall provide guidance and assistance to Federal agencies with respect to ensuring adequate and proper documentation of the policies and transactions of the Federal Government and ensuring proper records disposition.

(b) The Administrator shall provide guidance and assistance to Federal agencies to ensure economical and effective records management by such agencies.

(c) In carrying out their responsibilities under subsection (a) or (b), respectively, the Archivist and the Administrator shall each have the responsibility—

- (1) to promulgate standards, procedures, and guidelines with respect to records management and the conduct of records management studies;
- (2) to conduct research with respect to the improvement of records management practices and programs;
- (3) to collect and disseminate information on training programs technological developments, and other activities relating to records management;
- (4) to establish such interagency committees and boards as may be necessary to provide an exchange of information among Federal agencies with respect to records management;
- (5) to direct the continuing attention of Federal agencies and the Congress on the need for adequate policies governing records management;
- (6) to conduct records management studies and, in his discretion, designate the heads of executive agencies to conduct records management studies with respect to establishing systems and techniques designed to save time and effort in records management;
- (7) to conduct inspections or surveys of the records and the records management programs and practices within the between Federal agencies;
- (8) to report to the appropriate oversight and appropriations committees of the Congress and to the Director of the Office of Management and Budget annually and at such other times as the Archivist or the Administrator (as the case may be) deems desirable—
 - (A) on the results of activities conducted pursuant to paragraphs (1) through (7) of this section,
 - (B) on evaluations of responses by Federal agencies to any recommendations resulting from inspections or studies conducted under paragraphs (6) and (7) of this section and,
 - (C) to the extent practicable, estimates of costs to the Federal Government resulting from the failure of agencies to implement such recommendations.

(d) In addition, the Administrator, in carrying out the responsibilities under subsection (b) shall have the responsibility to promote economy and efficiency in the selection and utilization of space, staff, equipment, and supplies for records management.

§ 2905. Establishment of standards for selective retention of records; security measures

(a) The [Administrator of General Services] Archivist shall establish standards for the selective retention of records of continuing value, and assist Federal agencies in applying the standards to records in their custody. He shall notify the head of a Federal agency of any actual, impending, or threatened unlawful removal, defacing, alteration, or destruction of records in the custody of the agency that shall come to his attention, and assist the head of the agency in initiating action through the Attorney General for the recovery of records unlawfully removed and for other redress pro-

vided by law. In any case in which the head of the agency fails to initiate an action for such recovery or other redress within a reasonable period of time after being notified of any such unlawful action, the Archivist of the United States shall, through the Attorney General, initiate such an action; and the Archivist shall report the circumstances of any such failure by the head of the agency, or of any refusal of the Attorney General to initiate such an action, to the appropriate committees of the Congress.

(b) The [Administrator of General Services] Archivist shall assist the Administrator for the Office of Information and Regulatory Affairs in conducting studies and developing standards relating to record retention requirements imposed on the public and on State and local governments by Federal agencies.

§ 2906. Inspection of agency records

[(a)(1) In carrying out his duties and responsibilities under this chapter, the Administrator of General Services or his designee may inspect the records or the records management practices and programs of any Federal agency solely for the purpose of rendering recommendations for the improvement of records management practices and programs. Officers and employees of such agencies shall cooperate fully in such inspections, subject to the provisions of paragraphs (2) and (3) of this subsection.

[(2) Records, the use of which is restricted by law or for reasons of national security or the public interest, shall be inspected, in accordance with regulations promulgated by the Administrator, subject to the approval of the head of the agency concerned or of the President.

[(3) If the Administrator or his designee inspects a record, as provided in this subsection, which is contained in a system of records which is subject to section 552a of title 5, such record shall be—

[(A) maintained by the Administrator or his designee as a record contained in a system of records; or

[(B) deemed to be a record contained in a system of records for purposes of subsections (b), (c), and (i) of section 552a of title 5.]

[(b) In conducting the inspection of agency records provided for in subsection (a) of this section, the Administrator or his designee shall, in addition to complying with the provisions of law cited in subsection (a)(3), comply with all other Federal laws and be subject to the sanctions provided therein.]

§ 2906. Inspection of agency records

[(a)(1) In carrying out their respective duties and responsibilities under this chapter, the Administrator of General Services and the Archivist (or the designee of either) may inspect the records or the records management practices and programs of any Federal agency solely for the purpose of rendering recommendations for the improvement of records management practices and programs. Officers and employees of such agencies shall cooperate fully in such inspections, subject to the provisions of paragraphs (2) and (3) of this subsection.

(2) Records, the use of which is restricted by law or for reasons of national security or the public interest, shall be inspected, in accordance with regulations promulgated by the Administrator and the Archivist, subject to the approval of the head of the agency concerned or of the President. The regulations promulgated by the Administrator and the Archivist under this paragraph shall, to the extent practicable, be identical.

(3) If the Administrator or the Archivist (or the designee of either) inspects a record, as provided in this subsection, which is contained in a system of records which is subject to section 552a of title 5, such record shall be—

(A) maintained by the Administrator, the Archivist, or such designee as a record contained in a system of records; or

(B) deemed to be a record contained in a system of records for purposes of subsections (b), (c), and (i) of section 552a of title 5.

(b) In conducting the inspection of agency records provided for in subsection (a) of this section, the Administrator and the Archivist (or the designee of either) shall, in addition to complying with the provisions of law cited in subsection (a)(3), comply with all other Federal laws and be subject to the sanctions provided therein.

§ 2907. Records centers and centralized microfilming services

The [Administrator] Archivist may establish, maintain, and operate records centers and centralized microfilming services for Federal agencies.

§ 2908. Regulations

Subject to applicable law, the [Administrator of General Services] Archivist shall promulgate regulations governing the transfer of records from the custody of one executive agency to that of another.

§ 2909. Retention of records

The [Administrator of General Services] Archivist may empower a Federal agency, upon the submission of evidence of need, to retain records for a longer period than that specified in disposal schedules; and, in accordance with regulations promulgated by him, may withdraw disposal authorizations covering records listed in disposal schedules.

CHAPTER 31—RECORDS MANAGEMENT BY FEDERAL AGENCIES

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§ 3102. Establishment of program of management

The head of each Federal agency shall establish and maintain an active, continuing program for the economical and efficient management of the records of the agency. The program, among other things, shall provide for

(1) effective controls over the creation and over the maintenance and use of records in the conduct of current business;

(2) cooperation with the Administrator of General Services and the Archivist of the United States in applying standards, procedures, and techniques designed to improve the management of records, promote the maintenance and security of records deemed appropriate for preservation, and facilitate the segregation and disposal of records of temporary value; and

(3) compliance with sections [2101-2113,] 2101-2117, 2501-2507, [2701,] 2901-2909, and 3101-3107, of this title and the regulations issued under them.

§ 3103. Transfer of records to records centers

When the head of a Federal agency determines that such action may affect substantial economies or increased operating efficiency, he shall provide for the transfer of records to a records center maintained and operated by the [Administrator,] Archivist of the United States or, when approved by the [Administrator,] Archivist, to a center maintained and operated by the head of the Federal agency.

§ 3104. Certifications and determinations on transferred records

An official of the Government who is authorized to certify to facts on the basis of records in his custody, may certify to facts on the basis of records that have been transferred by him or his predecessors to the [Administrator of General Services,] Archivist of the United States, and may authorize the [Administrator] Archivist to certify to facts and to make administrative determinations on the basis of records transferred to the [Administrator,] Archivist notwithstanding any other law.

§ 3105. Safeguards

The head of each Federal agency shall establish safeguards against the removal or loss of records he determines to be necessary and required by regulations of the [Administrator of General Services,] Archivist of the United States. Safeguards shall include making it known to officials and employees of the agency—

(1) that records in the custody of the agency are not to be alienated or destroyed except in accordance with sections 3301-3314 of this title, and

(2) the penalties provided by law for the unlawful removal or destruction of records.

§ 3106. Unlawful removal, destruction of records

The head of each Federal agency shall notify the [Administrator of General Services,] Archivist of the United States of any actual, impending, or threatened unlawful removal, defacing, alteration, or destruction of records in the custody of the agency of which he is the head that shall come to his attention, and with the assistance of the [Administrator] Archivist shall initiate action through the Attorney General for the recovery of records he knows or has reason to believe have been unlawfully removed from his agency, or from another Federal agency whose records have been transferred to his legal custody. *In any case in which the head of the agency fails to initiate an action for such recovery or other redress within a reasonable period of time after being notified of any such*

unlawful action, the Archivist of the United States shall, through the Attorney General, initiate such an action; and the Archivist shall report the circumstances of any such failure by the head of the agency, or of any refusal of the Attorney General to initiate such an action, to the appropriate committees of the Congress.

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CHAPTER 33—DISPOSAL OF RECORDS

Sec.

- 3301. Definition of records.
- 3302. Regulations covering lists of records for disposal, procedure for disposal, and standards for reproduction.
- 3303. Lists and schedules of records to be submitted to **Administrator of General Services** *Archivist of the United States* by head of each Government agency.
- 3303a. Examination by **Administrator of General Services** *Archivist of the United States* of lists and schedules of records lacking preservation value; disposal of records.
- 3308. Disposal of similar records where prior disposal was authorized.
- 3309. Preservation of claims of Government until settled in General Accounting Office; disposal authorized upon written approval of Comptroller General.
- 3310. Disposal of records constituting menace to health, life, or property.
- 3311. Destruction of records outside continental United States in time of war or when hostile action seems imminent; written report to **Administrator of General Services** *Archivist of the United States*.

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§ 3301. Definition of records

(a) As used in this chapter, "records" includes all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or, as determined by the *Archivist of the United States*, appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra, copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included.

(b) *The Archivist of the United States shall, by regulation, establish detailed criteria under which material shall be examined to determine if it is a record as defined under subsection (a) and such regulation. The Archivist may have access, to determine compliance with such subsection and such regulations, to any material made or received by an agency of the United States Government.*

§ 3302. Regulations covering lists of records for disposal, procedure for disposal, and standards for reproduction

The **Administrator of General Services** *Archivist of the United States* shall promulgate regulations, not inconsistent with this chapter, establishing—

- (1) procedures for the compiling and submitting to him of lists and schedules or records proposed for disposal,
- (2) procedures for the disposal of records authorized for disposal, and
- (3) standards for the reproduction of records by photographic or microphotographic processes with a view to the disposal of the original records.

[§ 3303. Lists and schedules of records to be submitted to Administrator of General Services by head of each Government agency]

§ 3303. Lists and schedules of records to be submitted to the Archivist of the United States by head of each Government agency

The head of each agency of the United States Government shall submit to the [Administrator of General Services,] Archivist of the United States, under regulations promulgated as provided by section 3302 of this title—

- (1) lists of any records in the custody of the agency that have been photographed or microphotographed under the regulations and that, as a consequence, do not appear to have sufficient value to warrant their further preservation by the Government;
- (2) lists of other records in the custody of the agency not needed by it in the transaction of its current business and that do not appear to have sufficient administrative, legal, research, or other value to warrant their further preservation by the Government; and
- (3) schedules proposing the disposal after the lapse of specified periods of time of records of a specified form or character that either have accumulated in the custody of the agency or may accumulate after the submission of the schedules and apparently will not after the lapse of the period specified have sufficient administrative, legal, research, or other value to warrant their further preservation by the Government.

[§ 3303a. Examination by Administrator of General Services of lists and schedules of records lacking preservation value; disposal of records]

§ 3303a. Examination by Archivist of the United States of lists and schedules of records lacking preservation value; disposal of records

(a) The [Administrator of General Services,] Archivist of the United States, shall examine the lists and schedules submitted to him under section 3303 of this title. If the [Administrator] Archivist determines that any of the records listed in a list or schedule submitted to him do not, or will not after the lapse of the period specified, have sufficient administrative, legal, research, or other value to warrant their continued preservation by the Government, he may—*after publication of notice in the Federal Register and an opportunity for interested persons to submit comment thereon*—

- (1) notify the agency to that effect; and

(2) empower the agency to dispose of those records in accordance with regulations promulgated under section 3302 of this title.

(b) Authorizations granted under lists and schedules submitted to the **Administrator Archivist** under section 3303 of this title, and schedules promulgated by the **Administrator Archivist** under subsection (d) of this section, shall be mandatory, subject to section 2909 of this title. As between an authorization granted under lists and schedules submitted to the **Administrator Archivist** under section 3303 of this title and an authorization contained in a schedule promulgated under subsection (d) of this section, application of the authorization providing for the shorter retention period shall be required, subject to section 2909 of this title.

(c) The **Administrator Archivist** may request advice and counsel from the Committee on Rules and Administration of the Senate and the Committee on House Administration of the House of Representatives with respect to the disposal of any particular records under this chapter whenever he considers that—

- (1) those particular records may be of special interest to the Congress; or
- (2) consultation with the Congress regarding the disposal of those particular records is in the public interest.

However, this subsection does not require the **Administrator Archivist** to request such advice and counsel as a regular procedure in the general disposal of records under this chapter.

(d) The **Administrator Archivist** shall promulgate schedules authorizing the disposal, after the lapse of specified periods of time, of records of a specified form or character common to several or all agencies if such records will not, at the end of the periods specified, have sufficient administrative, legal, research, or other value to warrant their further preservation by the United States Government. A Federal agency may request changes in such schedules for its records pursuant to section 2909 of this title.

(e) The **Administrator Archivist** may approve and effect the disposal of records that are in his legal custody, provided that records that had been in the custody of another existing agency may not be disposed of without the written consent of the head of the agency.

(f) The **Administrator Archivist** shall make an annual report to the Congress concerning the disposal of records under this chapter, including general descriptions of the types of records disposed of and such other information as he considers appropriate to keep the Congress fully informed regarding the disposal of records under this chapter.

§ 3308. Disposal of similar records where prior disposal was authorized

When it appears to the **Administrator of General Services Archivist of the United States** that an agency has in its custody, or is accumulating, records of the same form or character as those of the same agency previously authorized to be disposed of, he may empower the head of the agency to dispose of the records, after they have been in existence a specified period of time, in accordance

with regulations promulgated under section 3302 of this title and without listing or scheduling them.

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§ 3310. Disposal of records constituting menace to health, life, or property

When the [Administrator of General Services] *Archivist of the United States* and the head of the agency that has custody of them jointly determine that records in the custody of an agency of the United States Government are a continuing menace to human health or life or to property, the [Administrator] *Archivist* shall eliminate the menace immediately by any method he considers necessary. When records in the custody of the [Administrator] *Archivist* are disposed of under this section, the [Administrator] *Archivist* shall report their disposal to the agency from which they were transferred.

[§ 3311. Destruction of records outside continental United States in time of war or when hostile action seems imminent; written report to Administrator of General Services]

§ 3311. Destruction of records outside continental United States in time of war or when hostile action seems imminent; written report to Archivist of the United States

During a state of war between the United States and another nation, or when hostile action by a foreign power appears imminent, the head of an agency of the United States Government may authorize the destruction of records in his legal custody situated in a military or naval establishment, ship, or other depository outside the territorial limits of continental United States—

(1) the retention of which would be prejudicial to the interests of the United States; or

(2) which occupy space urgently needed for military purposes and are, in his opinion, without sufficient administrative, legal, research, or other value to warrant their continued preservation.

Within six months after their disposal, the official who directed the disposal shall submit a written report to the [Administrator of General Services] *Archivist of the United States* in which he shall describe the character of the records and state when and where he disposed of them.

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CHAPTER 35—COORDINATION OF FEDERAL REPORTING SERVICES

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§ 3504. Authority and functions of Director

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